HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.1430 OF 2007

Between:

Smt. Radhika Prasad and three others
...Petitioners

AND

The Government of Andhra Pradesh,
Rep., by its Secretary,
Municipal Administration Department,
Secretariat Building, Hyderabad
and five others
...Respondents

: O R D E R :

Counsel for the petitioners : Shri Challa Gunaranjan

Counsel for respondent Nos. 2 to 4 : Smt. G. Jyothi Kiran

25th January, 2007

Per G.S.SINGHVI, CJ

Petitioner – Smt. Rekha Prasad and three others have filed this petition for issue of a mandamus to respondent Nos. 2 to 4 to pull down the alleged illegal and unauthorised constructions made by respondent Nos. 5 and 6 in plot No. 92, Ward No. 9, Block No. D, Nandgiri Hills (Jubilee Hills).

In the affidavit filed by petitioner No.1 – Smt. Rekha Prasad, it has been averred that respondent Nos. 5 and 6 are raising construction in violation of the sanctioned plan and Zoning Regulations, 1981. She has referred to G.O.Ms.No.601, MA, dated 5-11-1988, G.O.Ms.No.423, MA, dated 31-7-1998, G.O.Ms.No.86, dated 3-3-2006 and averred that even though the construction of cellar and sub-cellar is prohibited in Banjara Hills and Jubilee Hills, respondent Nos.5 and 6 have made such construction in violation of the sanctioned plan and zoning regulations. She has then averred that on being approached by the petitioners, the officials of the Municipal Corporation of Hyderabad visited the site and identified the unauthorised constructions, but they have not stopped the illegal construction and, in the meanwhile, respondent Nos. 5 and 6 obtained injunction from the Court of IV Junior Civil Judge, City Civil Court, Hyderabad.

We have heard Shri Challa Gunranjan, learned counsel for the petitioners and Smt.G. Jyothi Kiran, Stnading Counsel for Municipal Corporation of Hyderabad. Admittedly, the suit filed by respondent Nos.5 and 6 for grant of permanent injunction, which stands registered as O.S No. 2928 of 2006 is pending in

the Court of IV Junior Civil Judge, City Civil Court, Hyderabad and tin I.A.No.518 of 2006, the trial court passed an order of temporary injunction whereby respondent Nos. 2 to 4 have been restrained from interfering with the construction work in the plot in question and that order is still subsisting. This being the position, we cannot issue a direction, order or writ including the writ of mandamus and ordain the public authorities to take action in violation of the order passed by the competent court. Any such direction would be subversive of the sanctity of the judicial orders.

In our opinion, instead of filing writ petition under Article 226 of the Constitution, the petitioners should have applied for their impleadment as parties in the pending suit and brought all the facts to the notice of the trial Court so as to enable it to adjudicate the issue raised by the plaintiffs (respondent Nos. 5 and 6) in a correct perspective. Another course open to the petitioners was to apply for amendment of Writ Petition No.19967 of 2006 filed by them questioning the building permit granted to respondent Nos. 5 and 6 by Municipal Corporation, Hyderabad.

Since the petitioners have not adopted either of the aformentioned courses and the injunction order passed by the trial Court is still operative, we do not find any justification to issue a mandatory direction to the official respondents to demolish the disputed construction.

In the result, the writ petition is dismissed. However, liberty is given to the petitioners to apply for their impleadment as parties in O.S No. 2928 of 2006 and also for modification/vacation of the injunction order. If such applications are filed, the trial Court must decide

the same without any delay.

While disposing of the writ petition in the manner indicated above, we deem it proper to reiterate the observations made in other cases that in suit for injunction filed by the persons engaged in construction of buildings, the trial courts should not pass an order which facilitate continuance of the construction activity. If the concerned court is convinced about the existence of the factors like strong prima facie case, balance of convenience, irreparable injury and public interest, then an order of status quo can be passed, which necessarily means that the parties should not alter the status of the property. The trial courts must realize that an order of injunction which enables the plaintiff to continue to raise construction creates serious complications for the public authorities who are entrusted with the duty to ensure planned development of the urban areas.

As a sequel to dismissal of the writ petition, WPMP No.1822 of 2007 filed by the petitioners for interim relief is also dismissed.

A copy of this order be sent to IV Junior Civil Judge, City Civil Court, Hyderabad.

G.S. SINGHVI, C.J.

C.V. NAGARJUNA REDDY, J.

25th January, 2007
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